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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
EUGENE DIVISION

LINDA SOMERS

Case No.: 6:14-cv-813-AA

Plaintiff,

v.

PAYPAL, INC.

**DEFENDANT PAYPAL, INC.'S
ANSWER, AFFIRMATIVE
DEFENSES, AND COUNTERCLAIM;
DEMAND FOR JURY TRIAL**

Defendant.

Defendant, PayPal, Inc. ("PayPal"), answers and responds to Plaintiff's Complaint as follows:

INTRODUCTION

1. Answering Paragraph 1 of the Complaint, PayPal admits only that Plaintiff asserts a claim under the Telephone Consumer Protection Act, but denies that Plaintiff is entitled to any relief under that statute.

2. Answering Paragraph 2 of the Complaint, PayPal states that this paragraph contains a legal conclusion to which no response is required. To the extent a response is required, PayPal

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answers that it is a corporation that may act only through its agents.

JURISDICTION AND VENUE

3. Answering Paragraph 3 of the Complaint, PayPal states that this paragraph contains a legal conclusion to which no response is required.

4. Answering Paragraph 4 of the Complaint, PayPal admits only that it conducts business in Oregon. Further answering Paragraph 4 of the Complaint, PayPal states that the remaining allegations contain legal conclusions to which no response is required.

5. Answering Paragraph 5 of the Complaint, PayPal states that this paragraph contains a legal conclusion to which no response is required.

PARTIES

6. Answering Paragraph 6 of the Complaint, PayPal lacks sufficient knowledge or information to respond to the allegations, and therefore denies them.

7. Answering Paragraph 7 of the Complaint, PayPal admits the allegations contained therein.

FACTUAL ALLEGATIONS

8. Answering what is numbered Paragraph 10 of the Complaint, PayPal denies the allegations contained therein.

9. Answering what is numbered Paragraph 11 of the Complaint, PayPal states that the Complaint does not contain Plaintiff's complete phone number. Plaintiff therefore lacks sufficient knowledge or information to respond to the allegations, and therefore denies them.

10. Answering what is numbered Paragraph 12 of the Complaint, PayPal admits only that the number listed in Paragraph 12 is a telephone number maintained by PayPal. PayPal denies the

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remaining allegations in Paragraph 12.

11. Answering what is numbered Paragraph 13 of the Complaint, PayPal denies the allegations contained therein.

12. Answering what is numbered Paragraph 14 of the Complaint, PayPal denies the allegations contained therein.

13. Answering what is numbered Paragraph 15 of the Complaint, PayPal denies the allegations contained therein.

14. Answering what is numbered Paragraph 16 of the Complaint, PayPal denies the allegations contained therein.

COUNT I

15. Answering what is numbered Paragraph 17 of the Complaint, PayPal denies the allegations contained therein.

16. Answering what is numbered Paragraph 18 of the Complaint, PayPal denies the allegations contained therein.

PRAYER FOR RELIEF

17. Answering Paragraphs 19-22 of the Complaint, PayPal admits only that Plaintiff seeks such relief, but denies that she is entitled to any such relief.

AFFIRMATIVE DEFENSES

Having fully answered the Complaint, PayPal asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE

(Failure to State A Claim)

The Complaint fails to state a claim upon which relief can be granted.

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SECOND AFFIRMATIVE DEFENSE

(Arbitration)

Plaintiff's claims should be dismissed because they are subject to arbitration under the parties' contract.

THIRD AFFIRMATIVE DEFENSE

(Procedural and Substantive Due Process Rights)

The imposition of statutory damages under the TCPA against PayPal would violate the due process provisions of the United States Constitution and/or the Washington State Constitution.

FOURTH AFFIRMATIVE DEFENSE

(Excessive Fines)

The award of statutory penalties against PayPal would violate the prohibition against excessive fines of the United States Constitution.

FIFTH AFFIRMATIVE DEFENSE

(Lack of Willfulness)

PayPal's good-faith reliance on its objectively reasonable interpretation of the TCPA precludes a finding of willfulness. *See Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 127 S.Ct. 2201, 167 L.Ed.2d 1045 (2007).

SIXTH AFFIRMATIVE DEFENSE

(Consent)

Plaintiff is barred, in whole or in part, from maintaining her alleged cause of action because by providing her cell phone number to PayPal she has expressly consented to receive calls of the type she alleges that PayPal placed to her.

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SEVENTH AFFIRMATIVE DEFENSE
(Common Sense)

Here, common sense renders any calls by PayPal actionable under the TCPA. *See Henrique v. U.S. Marshal*, 653 F.2d 1317, 1320 (9th Cir. 1981) ("the Court must recognize the common sense practicalities of the situation presented.").

PayPal expressly reserves the right to assert such other and further affirmative defenses as may be appropriate.

COUNTERCLAIM

1. Defendant PayPal, as Counter-Plaintiff, complains and states as follows:

A. PARTIES

2. Counter-Plaintiff PayPal is a Delaware corporation with its principal place of business in San Jose, California.

3. Counter-Defendant Linda Somers ("Somers"), according to the Complaint, is a natural person residing in Eugene, Lane County, Oregon.

B. JURISDICTION AND VENUE

4. Jurisdiction is proper in this Court pursuant to 28 U.S.C. § 1331 and § 1337.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1331.

C. FACTUAL BACKGROUND

6. On or about March 18, 2000, Somers entered into a contractual relationship with PayPal by agreeing to PayPal's User Agreement (the "Agreement").

7. In relevant part, Section 10 of the Agreement provides:

10. Your Liability - Actions We May Take.

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10.1 Your Liability.

a. General. You are responsible for all Reversals, Chargebacks, Claims, fees, fines, penalties and other liability incurred by PayPal, a User, or a third party caused by or arising out of your breach of this Agreement, and/or your use of the PayPal Services. You agree to reimburse PayPal, a User, or a third party for any and all such liability.

b. Liability for Claims under PayPal Purchase Protection. If you are a Seller and PayPal makes a final decision that you lose a Claim filed directly with PayPal, you will be required to reimburse PayPal for your liability. Your liability will include the full purchase price of the item plus the original shipping cost (and in some cases you may not receive the item back). You will not receive a refund of your PayPal fees. PayPal Seller protection may cover your liability—*see* Section 11 (Protection for Sellers) below.

8. On information and belief, Somers sold a Dish Network ViP722K High Def 2 Rm HD DVR Satellite Receiver With 2 Remotes (“Receiver”) to a certain buyer (“Buyer”) for \$142.00.

9. Buyer later filed a claim with PayPal stating the Receiver is leased and, as a result, is not owned by Somers.

10. PayPal reviewed the claim and advised Buyer to return the item received to Somers for a full refund. Buyer complied with PayPal’s request.

11. Accordingly, PayPal issued a full refund to Buyer from Somers’ PayPal account. As a result, Somers’ PayPal account became negative by \$121.50.

12. To date, Somers has not paid this balance, despite efforts by PayPal to collect on the balance owed.

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D. COUNT 1

(Breach of Contract)

13. The preceding paragraphs are incorporated by reference as if set forth fully herein.
14. PayPal and Somers entered into an Agreement.
15. Somers breached the Agreement by failing to reimburse PayPal the \$121.50 PayPal paid on Somers behalf to reimburse Buyer, notwithstanding PayPal's requests that Somers pay the amount owed using the contact information Somers had provided.
16. Somers' breach of the Agreement has proximately caused PayPal damages in an amount to be proven at trial.

E. JURY DEMAND

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, defendant PayPal hereby demands a jury trial on all issues in this action triable as of right by a jury.

WHEREFORE, having answered Plaintiff's Complaint, and set forth its affirmative defenses and counterclaim, Defendant PayPal, Inc. prays for relief as follows:

1. Judgment dismissing Plaintiff's Complaint with prejudice and without recovery of any kind.
2. Judgment for PayPal in the amount of its damages, plus attorneys' fees and costs on any recognized ground in equity, contract, or statute.
3. Judgment for such other and further legal or equitable relief as the Court finds just in the premises.

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DATED: July 7, 2014

STOEL RIVES LLP

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following participant(s):

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DATED: July 7, 2014.

STOEL RIVES LLP

/s/ Kim A. McKenzie
Kim A. McKenzie, Practice Assistant

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